

1-1 By: Huberty, et al. (Senate Sponsor - Seliger) H.B. No. 866
 1-2 (In the Senate - Received from the House May 6, 2013;
 1-3 May 7, 2013, read first time and referred to Committee on
 1-4 Education; May 17, 2013, reported favorably by the following vote:
 1-5 Yeas 8, Nays 0; May 17, 2013, sent to printer.)

1-6 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-7				
1-8	X			
1-9	X			
1-10	X			
1-11	X			
1-12			X	
1-13	X			
1-14	X			
1-15	X			
1-16	X			

1-17 A BILL TO BE ENTITLED
 1-18 AN ACT

1-19 relating to the administration to public school students in certain
 1-20 grades of state-administered assessment instruments.

1-21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-22 SECTION 1. Section 39.023, Education Code, is amended by
 1-23 amending Subsections (a), (a-1), (a-2), (b), (c-1), (c-3), (e),
 1-24 (l), (m), (n), and (p) and adding Subsections (a-3), (a-4), (a-5),
 1-25 (a-6), (a-7), (a-8), and (a-9) to read as follows:

1-26 (a) The agency shall adopt or develop appropriate
 1-27 criterion-referenced assessment instruments designed to assess
 1-28 essential knowledge and skills in reading, writing, mathematics,
 1-29 social studies, and science. Except as provided by Subsection
 1-30 (a-2), all students, other than students assessed under Subsection
 1-31 (b) or (l) or exempted under Section 39.027, shall be assessed in:

1-32 (1) mathematics, [~~annually~~] in grades three and five
 1-33 [~~through seven~~] without the aid of technology and in grade eight
 1-34 with the aid of technology on any assessment instrument that
 1-35 includes algebra;

1-36 (2) reading, [~~annually~~] in grades three, five, and
 1-37 [~~through~~] eight;

1-38 (3) [~~writing, including spelling and grammar, in~~
 1-39 ~~grades four and seven,~~

1-40 [~~(4)~~] social studies, in grade eight; and

1-41 (4) [~~(5)~~] science, in grades five and eight [~~, and~~

1-42 [~~(6) any other subject and grade required by federal~~
 1-43 ~~law~~].

1-44 (a-1) The agency shall develop assessment instruments
 1-45 required under Subsections (a), (a-4), (a-5), and (a-6) [~~Subsection~~
 1-46 ~~(a)~~] in a manner that allows, to the extent practicable:

1-47 (1) the score a student receives to provide reliable
 1-48 information relating to a student's satisfactory performance for
 1-49 each performance standard under Section 39.0241; and

1-50 (2) an appropriate range of performances to serve as a
 1-51 valid indication of growth in student achievement.

1-52 (a-2) A student is not required to be assessed in a subject
 1-53 otherwise assessed at the student's grade level under Subsection
 1-54 (a) if the student:

1-55 (1) is enrolled in a course in the subject intended for
 1-56 students above the student's grade level and will be administered
 1-57 an assessment instrument adopted or developed under Subsection (a),
 1-58 (a-4), (a-5), or (a-6) that aligns with the curriculum for the
 1-59 course in which the student is enrolled; or

1-60 (2) is enrolled in a course in the subject for which
 1-61 the student will receive high school academic credit and will be

2-1 administered an end-of-course assessment instrument adopted under
2-2 Subsection (c) for the course.

2-3 (a-3) For each assessment instrument administered under
2-4 Subsection (a) or (a-5), the agency shall determine, based on
2-5 available information for that assessment instrument, the minimum
2-6 satisfactory adjusted scale score. The minimum satisfactory
2-7 adjusted scale score is the sum of the scale score that indicates
2-8 satisfactory performance on that assessment instrument, as
2-9 determined by the commissioner under Section 39.0241(a), plus the
2-10 minimum number of points that when added to the scale score produces
2-11 a score that, within a three percent margin of error, is predictive
2-12 that a student achieving that score would achieve satisfactory
2-13 performance on an assessment instrument in the same subject
2-14 administered to the student during the following school year.

2-15 (a-4) A student shall be assessed in grade four in a subject
2-16 for which an assessment instrument is administered under Subsection
2-17 (a) in grade three if, on the final assessment instrument in that
2-18 subject administered under Subsection (a) to the student in grade
2-19 three during the preceding school year, the student did not achieve
2-20 a score equal to or greater than the minimum satisfactory adjusted
2-21 scale score for that assessment instrument, as determined under
2-22 Subsection (a-3).

2-23 (a-5) A student shall be assessed in grade six in a subject
2-24 for which an assessment instrument is administered under Subsection
2-25 (a) in grade five if, on the final assessment instrument in that
2-26 subject administered under Subsection (a) to the student in grade
2-27 five during the preceding school year, the student did not achieve a
2-28 score equal to or greater than the minimum satisfactory adjusted
2-29 scale score for that assessment instrument, as determined under
2-30 Subsection (a-3).

2-31 (a-6) A student shall be assessed in grade seven in a
2-32 subject for which an assessment instrument was administered under
2-33 Subsection (a-5) to the student in grade six if, on the final
2-34 assessment instrument in that subject administered to the student
2-35 in grade six during the preceding school year, the student did not
2-36 achieve a score equal to or greater than the minimum satisfactory
2-37 adjusted scale score for that assessment instrument, as determined
2-38 under Subsection (a-3).

2-39 (a-7) A student assessed in mathematics under Subsection
2-40 (a-4), (a-5), or (a-6) shall be assessed without the aid of
2-41 technology.

2-42 (a-8) A school district or open-enrollment charter school
2-43 may, for its own use in determining whether students are performing
2-44 at a satisfactory level, administer to a student at the appropriate
2-45 grade level, other than a student required to be assessed, an
2-46 assessment instrument developed for purposes of Subsection (a-4),
2-47 (a-5), or (a-6). At the request of a district or open-enrollment
2-48 charter school, the agency shall provide, allow for the
2-49 administration of, and score each assessment instrument
2-50 administered under this subsection in the same manner and at the
2-51 same cost as for assessment instruments required to be administered
2-52 under the applicable subsection. The results of an assessment
2-53 instrument administered under this subsection may not be included
2-54 as an indicator of student achievement under Section 39.053 or any
2-55 other provision.

2-56 (a-9) If there is a conflict between this section and a
2-57 federal law or regulation as a result of forgoing under this section
2-58 certain administration of assessment instruments to students who
2-59 have recently performed successfully on assessment instruments
2-60 assessing the same subject, the commissioner shall seek a waiver
2-61 from the application of the conflicting federal law or regulation.
2-62 In seeking a waiver, the commissioner shall submit all relevant
2-63 data, including data relating to:

2-64 (1) the likelihood that a student who achieves a score
2-65 on an assessment instrument equal to or greater than the minimum
2-66 satisfactory adjusted scale score for that assessment instrument,
2-67 as determined under Subsection (a-3), will, in subsequent years,
2-68 perform satisfactorily on assessment instruments in the same
2-69 subject;

3-1 (2) the costs associated with ongoing assessment of
 3-2 students who have proven likely to perform successfully on
 3-3 subsequent assessment instruments; and

3-4 (3) the benefit of redirecting resources from
 3-5 assessment of students who have proven likely to perform
 3-6 successfully on subsequent assessment instruments toward enabling
 3-7 lower performing students to perform successfully on assessment
 3-8 instruments after one school year.

3-9 (b) The agency shall develop or adopt appropriate
 3-10 criterion-referenced alternative assessment instruments to be
 3-11 administered to a ~~each~~ student in a special education program
 3-12 under Subchapter A, Chapter 29, for whom an assessment instrument
 3-13 adopted under Subsection (a) or, to the extent applicable,
 3-14 Subsection (a-4), (a-5), or (a-6), even with allowable
 3-15 accommodations, would not provide an appropriate measure of student
 3-16 achievement, as determined by the student's admission, review, and
 3-17 dismissal committee.

3-18 (c-1) To the greatest extent practicable, the ~~The~~ agency
 3-19 shall develop any assessment instrument required under this section
 3-20 in a manner that allows for the measurement of annual improvement in
 3-21 student achievement as required by Sections 39.034(c) and (d).

3-22 (c-3) In adopting a schedule for the administration of
 3-23 assessment instruments under this section, the State Board of
 3-24 Education shall require:

3-25 (1) assessment instruments administered under
 3-26 Subsections (a), (a-4), (a-5), and (a-6) ~~Subsection (a)~~ to be
 3-27 administered on a schedule so that the first assessment instrument
 3-28 is administered at least two weeks later than the date on which the
 3-29 first assessment instrument was administered under Subsection (a)
 3-30 during the 2006-2007 school year; and

3-31 (2) the spring administration of end-of-course
 3-32 assessment instruments under Subsection (c) to occur in each school
 3-33 district not earlier than the first full week in May, except that
 3-34 the spring administration of the end-of-course assessment
 3-35 instruments in English I, English II, and English III must be
 3-36 permitted to occur at an earlier date.

3-37 (e) Under rules adopted by the State Board of Education,
 3-38 every third year, the agency shall release the questions and answer
 3-39 keys to each assessment instrument administered under Subsection
 3-40 (a), (a-4), (a-5), (a-6), (b), (c), (d), or (l), excluding any
 3-41 assessment instrument administered to a student for the purpose of
 3-42 retaking the assessment instrument, after the last time the
 3-43 instrument is administered for that school year. To ensure a valid
 3-44 bank of questions for use each year, the agency is not required to
 3-45 release a question that is being field-tested and was not used to
 3-46 compute the student's score on the instrument. The agency shall
 3-47 also release, under board rule, each question that is no longer
 3-48 being field-tested and that was not used to compute a student's
 3-49 score.

3-50 (1) The State Board of Education shall adopt rules for the
 3-51 administration of the assessment instruments adopted under
 3-52 Subsection (a) and, to the extent applicable, the assessment
 3-53 instruments adopted under Subsection (a-4) in Spanish to students
 3-54 in grades three, four, and ~~through~~ five who are of limited English
 3-55 proficiency, as defined by Section 29.052, whose primary language
 3-56 is Spanish, and who are not otherwise exempt from the
 3-57 administration of an assessment instrument under Section
 3-58 39.027(a)(1) or (2). Each student of limited English proficiency
 3-59 whose primary language is Spanish, other than a student to whom
 3-60 Subsection (b) applies, may be assessed using assessment
 3-61 instruments in Spanish under this subsection for up to three years
 3-62 or assessment instruments in English under Subsection (a) and, as
 3-63 applicable, Subsection (a-4). The language proficiency assessment
 3-64 committee established under Section 29.063 shall determine which
 3-65 students are administered assessment instruments in Spanish under
 3-66 this subsection.

3-67 (m) The commissioner by rule shall develop procedures under
 3-68 which the language proficiency assessment committee established
 3-69 under Section 29.063 shall determine which students are exempt from

4-1 the administration of the assessment instruments under Section
 4-2 39.027(a)(1) or (2). The rules adopted under this subsection shall
 4-3 ensure that the language proficiency assessment committee provides
 4-4 that the exempted students are administered the assessment
 4-5 instruments under Subsections (a) and (c) and, to the extent
 4-6 applicable, Subsections (a-4), (a-5), and (a-6) at the earliest
 4-7 practical date.

4-8 (n) This subsection applies only to a student who is
 4-9 determined to have dyslexia or a related disorder and who is an
 4-10 individual with a disability under 29 U.S.C. Section 705(20) and
 4-11 its subsequent amendments. The agency shall adopt or develop
 4-12 appropriate criterion-referenced assessment instruments designed
 4-13 to assess the ability of and to be administered to each student to
 4-14 whom this subsection applies for whom the assessment instruments
 4-15 adopted under Subsection (a) and, to the extent applicable, the
 4-16 assessment instruments adopted under Subsections (a-4), (a-5), and
 4-17 (a-6), even with allowable modifications, would not provide an
 4-18 appropriate measure of student achievement, as determined by the
 4-19 committee established by the board of trustees of the district to
 4-20 determine the placement of students with dyslexia or related
 4-21 disorders. The committee shall determine whether any allowable
 4-22 modification is necessary in administering to a student an
 4-23 assessment instrument required under this subsection. The
 4-24 assessment instruments required under this subsection shall be
 4-25 administered on the same schedule as the assessment instruments
 4-26 administered under Subsections (a), (a-4), (a-5), and (a-6), as
 4-27 applicable [Subsection (a)].

4-28 (p) On or before September 1 of each year, the commissioner
 4-29 shall make the following information available on the agency's
 4-30 Internet website for each assessment instrument administered under
 4-31 Subsection (a), (a-4), (a-5), (a-6), (c), or (l):

- 4-32 (1) the number of questions on the assessment
 4-33 instrument;
- 4-34 (2) the number of questions that must be answered
 4-35 correctly to achieve satisfactory performance as determined by the
 4-36 commissioner under Section 39.0241(a);
- 4-37 (3) the number of questions that must be answered
 4-38 correctly to achieve satisfactory performance under the college
 4-39 readiness performance standard as provided by Section 39.0241; and
 4-40 (4) the corresponding scale scores.

4-41 SECTION 2. (a) This Act takes effect on any date not later
 4-42 than September 1, 2015, on which the commissioner of education:

- 4-43 (1) obtains any necessary waiver from the application
 4-44 of federal law or regulation conflicting with Section 39.023,
 4-45 Education Code, as amended by this Act, as required by Section
 4-46 39.023(a-9), Education Code, as added by this Act; or
- 4-47 (2) receives written notification from the United
 4-48 States Department of Education that a waiver is not required.

4-49 (b) This Act applies beginning with the first school year
 4-50 that begins after the date on which this Act takes effect under
 4-51 Subsection (a) of this section.

4-52 (c) If the commissioner of education obtains any necessary
 4-53 waiver or receives written notification as described by Subsection
 4-54 (a) of this section, the commissioner shall certify that the
 4-55 commissioner has obtained the waiver or received notification that
 4-56 a waiver is not required, as applicable, and shall publish notice of
 4-57 that fact in the Texas Register as soon as practicable after
 4-58 obtaining the waiver or receiving notification.

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